



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2103

www.deq.virginia.gov

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

Francis L. Daniel
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

**Newport News Shipbuilding and Dry Dock Company
EPA ID Number VAD001307495**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§10.1-1182 *et seq.*, 10.1-1402, 10.1-1405, and 10.1-1455 between the Virginia Waste Management Board and the Newport News Shipbuilding and Dry Dock Company, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1401 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “NNS” means the Newport News Shipbuilding and Dry Dock Company, certified to do business in Virginia, and its affiliates, partners, subsidiaries, and parents.
6. “Order” means this document, also known as a consent order.

7. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. “EPA” means the United States Environmental Protection Agency, with the headquarter office located at 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
9. “Regulations” means the Virginia Hazardous Waste Management Regulations, 9VAC 20-60-12 *et seq.* (“VHWMR”). The specific provisions of Title 40 of the Code of Federal Regulations (“CFR”) cited herein are incorporated by reference at 9 VAC 20-60-262, -266, and -268.
10. “RCRA” means the federal Resource Conservation and Recovery Act.

SECTION C: Findings of Fact and Conclusions of Law

1. NNS owns and operates the shipbuilding and supplier of vessel services facility located at 4101 Washington Av, Newport News, VA.
2. NNS can be a generator of hazardous waste at this facility, including low-level mixed waste. Low-level mixed waste as defined by 40 CFR 266.210 contains both RCRA hazardous waste and low-level radioactive waste.
3. NNS does not currently hold a RCRA permit for the treatment, storage, or disposal of hazardous waste. However, NNS may accumulate hazardous waste on site for 90 days or less without a permit or having interim status provided that the waste is managed in accordance with 40 CFR 262.34(a) which includes requirements for containers and containment, labeling, siting, and emergency response.
4. NNS generated prior to August 1, 2003 a bag of low-level mixed waste containing less than 20 pounds of debris and paint chips from a vacuum unit during work on a Navy vessel. This low-level mixed waste stream had previously been determined to contain a hazardous waste characteristic of toxicity for chromium (EPA hazardous waste number D007).
5. According to NNS, on August 1, 2003 the bag of low-level mixed waste was unintentionally sent with a container lot of radioactive waste to the Duratek Services, Inc (“Duratek”) radioactive waste processing site at Oak Ridge, Tennessee. Radioactive waste processing facilities are not necessarily approved low-level mixed waste facilities for all low-level mixed waste streams. The Duratek facility at Oak Ridge Tennessee is not permitted in accordance with RCRA requirements to handle low-level mixed waste.

6. On October 7, 2003, NNS staff contacted DEQ notifying the Department of the improper shipment of low-level mixed waste from NNS to Duratek. The error was discovered by NNS staff as a result of a documented practice that reflects due diligence at the facility to prevent, detect and correct violations on October 3, 2003. It was discovered during preparation of additional low-level mixed waste for separate shipment. The error was verified by NNS on October 6, 2003.
7. NNS reported that Duratek processed the container lot with the mis-labeled vacuum unit debris and paint chips low-level mixed waste by means of incineration, which yielded a non-hazardous product. NNS reports that it provided for disposition of the entire container lot incinerated residue as low-level mixed waste at additional cost. This additional step was taken since at that point it was not possible to separate the incinerated low-level mixed waste portion from the other incinerated radioactive-only waste portion of the container lot.
8. 40 CFR 262.20(a) provides that the generator who transports, or offers for transportation, hazardous waste for offsite treatment, storage or disposal must prepare a manifest on forms approved by the federal government for hazardous waste. Contrary to 40 CFR 262.20(a), NNS did not offer for transport the bag of low-level mixed waste under a hazardous waste manifest.
9. 40 CFR 262.20(b) provides that the generator who transports, or offers for transportation, hazardous waste for offsite treatment, storage or disposal must designate on the manifest one facility which is permitted to handle the waste described on the manifest. Duratek is not a facility permitted in accordance with RCRA requirements to handle the bag of low-level mixed waste required for designation by 40 CFR 262.20(b).
10. 40 CFR 262.34(a)(3) provides that while waste is accumulated on site, the container must be labeled or marked clearly with the words "Hazardous Waste". Contrary to 40 CFR 262.34(a)(3), the bag of low-level mixed waste was marked as non-hazardous, low-level radiological waste.
11. 40 CFR 268(a)(1) provides that a generator must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in 40 CFR 268.40. If the waste does not meet the treatment standards, then the generator must provide notice to the treatment or storage facility in accordance with 40 CFR 268.7(a)(2). Contrary to 40 CFR 268(a)(1) and 40 CFR 268.7(a)(2), neither treatment nor notice was provided to Duratek as required.
12. DEQ alleges that NNS violated 40 CFR 262.20(a) by offering for transport the bag of low-level mixed waste under a non-hazardous waste manifest.

13. DEQ alleges that NNS violated 40 CFR 262.20(b) by failing to offer for transport the bag of low-level mixed waste to a facility permitted in accordance with RCRA requirements to handle the bag of mixed waste.
14. DEQ alleges that NNS violated 40 CFR 262.34(a)(3) by failing to label or clearly mark the bag of low-level mixed waste with the words "Hazardous Waste".
15. DEQ alleges that NNS violated 40 CFR 268(a)(1) by failing to determine if the bag of low-level mixed waste met land disposal treatment standards, and violated 40 CFR 268.7(a)(2) by failing to provide notice to Duratek if the bag of low-level mixed waste met land disposal treatment standards.
16. DEQ issued NNS a Notice of Violation on January 30, 2004 advising of the above listed failures of hazardous waste manifest, notice to the receiving facility, container marking, and land disposal treatment suitability.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455, orders NNS, and NNS voluntarily agrees, to pay a civil charge of \$4,500.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," shall indicate the NNS's Federal Identification Number, and shall be sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of NNS for good cause shown by NNS, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those alleged violations specifically identified herein, including those matters addressed in the Notice of Violation issued to NNS by DEQ on January 9, 2004. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. This Order is made by agreement and with the consent of the parties, and does not constitute a finding, adjudication or admission of violation of any federal, state or local law, rule, or regulation or any allegations contained herein.
4. NNS consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. NNS declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by NNS to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. NNS shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. NNS shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The NNS shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility

of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and NNS. Notwithstanding the foregoing, NNS agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the NNS. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve NNS from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, NNS voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Apr. 18, 200⁵Feb.

Francis L. Daniel
Francis L. Daniel, Regional Director
for Robert G. Burnley, Director
Department of Environmental Quality

NNS voluntarily agrees to the issuance of this Order.

By: James R. Thornton
Date: 12/07/04

Commonwealth of Virginia

City/County of Newport News

The foregoing document was signed and acknowledged before me this 7th day of
December, 2004, by JAMES R. THORNTON, who is
(month) (name)

DIRECTOR, ENQS of NNS, on behalf of NNS.
(title)

Paige L. Luoker
Notary Public

My commission expires: June 30, 2008